

**STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
DOUG SUTHERLAND, Commissioner of Public Lands**

AQUATIC LANDS CONSERVATION LICENSE

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**STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
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AQUATIC LANDS CONSERVATION LICENSE

Agreement No. [__-____]

THIS LICENSE is granted by the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), to [____], a [*Washington corporation -OR- partnership -OR- marital community -OR- single individual -OR- _____*] ("Licensee").

SECTION 1 PERMISSION, LOCATION AND ACCESS

Subject to the terms and conditions set forth below, State grants Licensee and its agents, contractors and subcontractors a temporary revocable license to enter upon the real property described in Exhibit A (the "property") to meet the proposed conservation goals by conducting the authorized activities described below and for no other purpose. In executing this license, State is relying on the surveys, plats, diagrams, and/or legal descriptions provided by Licensee. Licensee is not relying upon and State is not making any representations about any survey, plat, diagram, and/or legal description provided by State.

SECTION 2 RENT

2.1 Annual Rent. Until adjusted as set forth below, Tenant shall pay to State an annual rent of [_____] Dollars (\$[____]). The annual rent, as it currently exists or as adjusted or modified (the "Annual Rent"), shall be due and payable in full on or before the Commencement Date and on or before the same date of each year thereafter.

2.2 Payment Place. Payment is to be made to Financial Management Division, 1111 Washington St SE, PO Box 47041, Olympia, WA 98504-7041.

2.3 Adjustment Based on Use. Annual Rent is based on Tenant's Permitted Use of the Property, as described in Section 4 of this document. If Tenant's Permitted Use changes, the Annual Rent shall be adjusted as appropriate for the changed use.

2.4 Rent Adjustments for Water Dependent Uses.

- (a) **Inflation Adjustment.** State shall adjust the water-dependent rent annually pursuant to RCW 79.90.450 - .902, except in those years in which the rent is

revalued under Subsection 2.4(b) below. This adjustment shall be effective on the anniversary of the Commencement Date.

- (b) Revaluation of Rent. State shall, at the end of the first four-year period of the Term, and at the end of each subsequent four-year period, revalue the water-dependent Annual Rent in accordance with RCW 79.90.450 - .902.
- (c) Rent Cap. After the initial year's rent is determined under Subsection 2.1, rent may increase by operation of Subsection 2.4(a) or 2.4(b). If application of the statutory rent formula for water dependent uses would result in an increase in the rent attributable to such uses of more than fifty percent (50%) in any one year, the actual increase implemented in such year shall be limited to fifty percent (50%) of the then-existing rent, in accordance with RCW 79.90.490. The balance of the increase determined by the formula shall be deferred to subsequent years and added to the next and subsequent years' rental increases until the full amount of the increase is lawfully implemented.

2.5 Rent Adjustment Procedure.

- (a) Notice of Rent Adjustment. Notice of any adjustments to the Annual Rent that are allowed by Subsection 2.4(b) shall be provided to Tenant in writing no later than ninety (90) days after the anniversary date of the Lease.
- (b) Procedures on Failure to Make Timely Adjustment. In the event the State fails to provide the notice required in Subsection 2.5(a), it shall be prohibited from collecting any adjustments to rent only for the year in which it failed to provide notice. No failure by State to adjust Annual Rent pursuant to Subsection 2.5(a) shall affect the State's right to establish Annual Rent for a subsequent lease year as if the missed or waived adjustment had been implemented. The State may adjust, bill, and collect Annual Rent prospectively as if any missed or waived adjustments had actually been implemented. This includes the implementation of any inflation adjustment and any rent revaluations that would have been authorized for previous lease years.

SECTION 3 TERM OF LICENSE

This license shall be effective on the [_____] day of [_____, 20____]
("Commencement Date") and shall terminate on the [_____] day of [_____, 20____]
(the "Termination Date"), unless terminated sooner under the terms of this License, or when Licensee completes the Activities, whichever occurs first. State reserves the right to revoke this license at any time upon thirty (30) days notice to Licensee.

SECTION 4 AUTHORIZED ACTIVITIES

4.1 Authorized Activities . This license authorizes environmental *[restoration, -AND/OR-enhancement, -AND/OR- creation]*, activities as described in Exhibit B to this license (the “activities”). Activities completed under a regulatory framework should not be authorized under a conservation license. Similarly, conservation activities accomplished under a conservation license should not be applied to gain compensatory mitigation or natural resource damage credits. No other activities may be conducted on the Property without the prior written permission of State. This license does not include any rights to harvest, collect, or damage any natural resource, including aquatic life or living plants *[, except as expressly permitted in Exhibit B as part of the Activities]*.

4.2 Restrictions on Use. Licensee shall not cause damage to natural resources on the property or authorize activities that cause damage to natural resources on the property or permit any of its employees, agents, or any other person acting under Licensee’s direction or control to cause any such damage *[, except to the extent such damage is expressly permitted in Exhibit B as part of the Activities]*. Licensee shall also not cause any filling activity to occur on the Property or permit any of its employees, agents, or any other person acting under Licensee’s direction or control to cause any such damage *[, except to the extent such filling is expressly permitted in Exhibit B as part of the Activities]*. This prohibition includes any deposit of rock, earth, ballast, refuse, garbage, waste matter (including chemical, biological or toxic wastes), hydrocarbons, any other pollutants, or other matter in or on the Property, except as approved in writing by State. Licensee shall neither commit nor permit any of its employees, agents, or any other person acting under Licensee’s direction and control to commit nor allow waste on the Property.

If there is any unanticipated damage, filling, or waste caused by the Licensee, its employees, agents, or any other person acting under Licensee’s direction, State may take any steps reasonably necessary to remedy such damage. Upon demand by State, Licensee shall pay the costs of such remedial action, to the extent that the damage, filling, or waste was caused or permitted by Licensee, its employees, agents, or any other person acting under Licensee’s direction, is in violation of the foregoing provisions. The costs covered by this section, include but are not limited to the reasonable costs of removing and disposing of any material deposited improperly on the Property. Neither the foregoing provisions nor any other provisions of this License shall, however, be construed to create any liability on the part of Licensee for the activities of anyone other than Licensee’s employees, agents, or other persons acting on behalf of, or at the direction of, the Licensee, whether committed on or off of the Property.

4.3 Condition of the Property and Ownership of Improvements Upon Termination. Licensee shall use its reasonable best efforts to ensure that, prior to the Termination Date, Licensee shall carry out the Activities called for in this License, with the goal of {state the goal}. If Licensee’s actions, result in unintended or unanticipated conditions that are deleterious to the Property or natural resources on the Property, or result in conditions that pose a threat to human health or safety, Licensee shall take all steps necessary to restore the Property to the condition it

was in prior to the initiation of such actions. This section shall not require Licensee to restore any changed conditions caused solely by parties other than Licensee, its employees, or any other person acting on behalf of, or at the direction of, the Licensee. If Licensee fails to restore the Property as required in this section, State may take any steps reasonably necessary to restore the Property. Upon demand by State, Licensee shall pay all costs of such restoration. At the termination of this License, any authorized improvements or additions made to the Property through this license shall become owned the State.

SECTION 5 TITLE TO PROPERTY

State grants a right of access only to the extent of its interest in the Property. It does not warrant that it is the owner of the Property or that Licensee's entry and use of the Property does not violate other persons' rights to the Property. Licensee agrees to obtain approvals from other persons who have a right, title, or interest in the Property. This license shall not be exclusive and State may grant similar rights to anyone else. State may also lease the Property or grant easements or other licenses.

SECTION 6 NOTICE OF DATE OF ENTRY

Licensee and its agents, contractors, and subcontractors shall provide State with at least two (2) weeks notice of the schedule of anticipated dates necessary for conducting the Activities. Licensee shall promptly notify State of any modifications in the schedule.

SECTION 7 COMPLIANCE WITH LAWS

Licensee shall, at all times, keep current and comply with all conditions and terms of any permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding the use of the Property. Licensee shall, at its sole expense, obtain all regulatory or proprietary consents or approvals required to be obtained from any public authority, State or third party in connection with any work on the Property or Licensee's use or occupation of the Property.

SECTION 8 INDEMNIFICATION AND LIABILITY

Licensee shall indemnify, defend, and hold harmless State, its employees, officers, and agents from any and all liability, damages (including bodily injury, personal injury and damages to land, aquatic life, and other natural resources), expenses, causes of action, suits, claims, costs, fees (including attorneys' fees), penalties, or judgments, of any nature whatsoever, arising out of the use, occupation, or control of the Property by Licensee, its sublicensees, invitees, agents, employees, licensees, or permittees, except as may arise solely out of the willful or negligent act of State or State's elected officials, employees, or agents. To the extent that RCW 4.24.115 applies, Licensee shall not be required to indemnify, defend, and hold State harmless from State's sole or concurrent negligence. Licensee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its officials, agents or employees.

SECTION 9 INSURANCE

At its own expense, Licensee shall procure and maintain during the Term of this license, the insurance coverages and limits described in Section 9(a) and (b) below. This insurance shall be issued by an insurance company or companies admitted and licensed by the Insurance Commissioner to do business in the State of Washington. Insurers must have a rating of B+ or better by "Best's Insurance Reports," or a comparable rating by another rating company acceptable to State. If non-admitted or non-rated carriers are used, the policies must comply with Chapter 48.15 RCW.

(a) Types of Required Insurance.

- (1) Commercial General Liability Insurance. Licensee shall procure and maintain Commercial General Liability insurance covering claims for bodily injury, personal injury, or property damage arising on the Property and/or arising out of Licensee's operations. Insurance must include liability coverage with limits not less than those specified below:

Description

Each Occurrence	<i>[\$1,000,000 -OR- \$_____]</i>
General Aggregate Limit	<i>[\$2,000,000 -OR- \$_____]</i>

- (2) Worker's Compensation/Employer's Liability Insurance. As applicable, Licensee shall procure and maintain:

- (i) State of Washington Worker's Compensation coverage with respect to any work by Licensee's employees on or about the Property and on any improvements;
- (ii) Employers Liability or "Stop Gap" insurance coverage with limits not less than those specified below. Insurance must include bodily injury coverage with limits not less than those specified below:

	Each Employee	Policy Limit
<u>By Accident</u>	<u>By Disease</u>	<u>By Disease</u>
<i>[\$1,000,000 -OR- \$_____]</i>	<i>[\$1,000,000 -OR- \$_____]</i>	<i>[\$1,000,000 -OR- _____]</i>

- (iii) Jones Act coverage with respect to any work by Licensee's employees on or about the Property and on any improvements.

- (3) Business Auto Policy Insurance. As applicable, Tenant shall procure and maintain a business auto policy. The insurance must include liability coverage with limits not less than those specified below:

<u>Description</u>	<u>Each Accident</u>
Bodily Injury and Property Damage	\$1,000,000

- (b) Terms of Insurance. The policies required under Section 9(a) shall name the State of Washington, Department of Natural Resources as an additional insured (except for State of Washington Worker's Compensation coverage, and Federal Jones' Act coverage). Furthermore, all policies of insurance described in Section 9(a) shall meet the following requirements:
- (1) Policies shall be written as primary policies not contributing with and not in excess of coverage that State may carry;
 - (2) Policies shall expressly provide that such insurance may not be canceled or nonrenewed with respect to State except upon forty-five (45) days prior written notice from the insurance company to State;
 - (3) All liability policies must provide coverage on an occurrence basis; and
 - (4) Liability policies shall not include exclusions for cross liability.
- (c) Proof of Insurance. Licensee shall furnish evidence of insurance in the form of a Certificate of Insurance satisfactory to the State accompanied by a check list of coverages provided by State, executed by a duly authorized representative of each insurer showing compliance with the insurance requirements described in Section 9, and, if requested, copies of policies to State. The Certificate of Insurance shall reference the State of Washington, Department of Natural Resources and the right of entry number. Receipt of such certificates or policies by State does not constitute approval by State of the terms of such policies. Licensee acknowledges that the coverage requirements set forth herein are the minimum limits of insurance the Licensee must purchase to enter into this License. These limits may not be sufficient to cover all liability losses and related claim settlement expenses. Purchase of these limits of coverage does not relieve the Licensee from liability for losses and settlement expenses greater than these amounts.

SECTION 10 FINANCIAL SECURITY

- (a) At its own expense, Tenant shall procure and maintain a corporate surety bond or provide other financial security satisfactory to State (the "Bond") in an amount equal to Dollars (\$), which shall secure Tenant's full performance of its obligations under this Lease, with the exception of the obligations under Section 8 (Environmental Liability/Risk Allocation) above. The Bond shall be in a form and issued by a surety company acceptable to State. State may require an adjustment in the amount of the Bond:

- (1) To reflect any adjustments in Annual Rent; or,
 - (2) Upon a material change in either the Permitted Use or the condition of any improvements.
- (b) Upon any default by Tenant in its obligations under this Lease, State may collect on the Bond to offset the liability of Tenant to State. Collection on the Bond shall not relieve Tenant of liability, shall not limit any of State's other remedies, and shall not reinstate or cure the default or prevent termination of the Lease because of the default.

SECTION 11 PROHIBITION AGAINST ASSIGNMENT

Licensee shall not assign this License.

SECTION 12 APPLICABLE LAW AND VENUE

This license shall be interpreted and construed pursuant to the laws of the State of Washington. Venue for any action arising out of or in connection with this license shall be in the Superior Court for Thurston County, Washington.

SECTION 13 MODIFICATION

Any modification of this license must be in writing and signed by the parties. State shall not be bound by any oral representations or statements.

THIS LICENSE requires the signature of all parties and is executed as of the date of the last signature below.

(COMPANY NAME - ALL IN CAPS)

Dated: _____, 20_____

By:

Title:

Address:

STATE OF WASHINGTON
DEPARTMENT OF NATURAL
RESOURCES

Dated: _____, 20_____

By:

Title: (Typed Name Goes Here -
Commissioner, Manager, etc)

Address:

Aquatics Lands Conservation License
Approved as to Form September 2004
By Alexandra K. Smith
Assistant Attorney General
State of Washington

CORPORATE ACKNOWLEDGMENT

STATE OF _____)
) ss
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally appeared _____ to me known to be the _____ of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that (he/she was) (they were) authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of
_____ residing at _____.

My appointment expires _____.

STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)

)ss

County of)

On this _____ day of _____, 20____, personally appeared before me _____, to me known to be the _____ of the Department of Natural Resources, State of Washington, who executed the within and foregoing instrument on behalf of the State of Washington, and acknowledged said instrument to be the free and voluntary act and deed of the State of Washington for the uses and purposes therein mentioned, and on oath stated that [he/she] was authorized to execute said instrument and that the seal affixed is the official seal of the Commissioner of Public Lands for the State of Washington.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Notary Public in and for the State of
Washington, residing at _____.
My appointment expires _____.